

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In Matter of )  
 )  
Protecting Consumers from Unauthorized Carrier ) CG Docket No. 17-169  
Changes and Related Unauthorized Charges )  
 )

To: The Commission

**COMMENTS OF CTIA**

CTIA<sup>®1</sup> commends the Commission’s commitment to routing out “bad actors” who seek to defraud American consumers and supports the focus on slamming, including “slam-and-cram” schemes, in the Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned docket.<sup>2</sup> The Commission should address this problem, but, as the *NPRM* recognizes, this fraudulent activity is targeted at wireline consumers – not wireless consumers. Therefore, Commission action in this proceeding should be limited to the wireline context.

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<sup>1</sup> CTIA<sup>®</sup> (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21<sup>st</sup>-century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

<sup>2</sup> *Protecting Consumers from Unauthorized Carrier Changes and Related Unauthorized Charges* Notice of Proposed Rulemaking, 32 FCC Rcd 6022, 6025 ¶ 10 (rel. July 14, 2017) (“*NPRM*”) (“The steps we seek comment on today to strengthen our rules seek to address the evolving practices of *bad actors* with respect to slamming and cramming, while not impeding competition or impairing the ability of consumers to switch providers.”) (emphasis added).

**I. THE *NPRM* ADDRESSES FRAUDULENT ACTIVITIES THAT HAVE PLAGUED CONSUMERS IN THEIR USE OF WIRELINE, BUT NOT WIRELESS, SERVICE.**

The *NPRM* recognizes that slamming is not, and has never been, a wireless issue. Its proposals largely focus on wireline carriers, notwithstanding questions about whether any proposals should apply to CMRS. The *NPRM*'s key focus is on "unscrupulous carriers" and their slam-and-cram schemes, in which they "misrepresent who they are and why they are calling, fraudulently verify carrier changes, and cram long-distance charges onto consumers' bills."<sup>3</sup> The *NPRM* observes that "the vast majority of complaints and enforcement actions appear to target the billing practices of traditional local exchange carriers, not wireless carriers or interconnected VoIP providers."<sup>4</sup> Elsewhere, the *NPRM* notes that one of its proposals "does not make sense" for CMRS and interconnected VoIP,<sup>5</sup> and asks whether to extend another proposal to CMRS and VoIP "[n]otwithstanding the lack of complaints and enforcement actions" about those services.<sup>6</sup> In these statements, the *NPRM* appears to recognize that slamming, including slamming-and-cramming, is not a wireless concern.

Slamming has never been a wireless issue for multiple reasons. First, wireless customers do not have separate service providers for local and long distance wireless calls, and instead receive "all distance" voice service – a uniform, bundled local, local toll, and long-distance offering.<sup>7</sup> Consumers can choose voice service from a robustly competitive wireless

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<sup>3</sup> *Id.* at 6024 ¶ 5.

<sup>4</sup> *See id.* at 6028-29 ¶ 18.

<sup>5</sup> *Id.* at 6028 ¶ 15.

<sup>6</sup> *Id.* at 6028-29 ¶ 18.

<sup>7</sup> *See, e.g., id.* at 6027-28 ¶ 14 ("We believe consumers purchase CMRS and interconnected VoIP as all distance services...."); *id.* at 6028-29 ¶ 18 (asking if lack of wireless and VoIP

marketplace.<sup>8</sup> In contrast, because of the equal access rules, wireline local exchange subscribers can choose a telecommunications carrier other than their local exchange carrier to handle local toll and long-distance toll calls.<sup>9</sup> The equal access rules created an inadvertent byproduct: an opportunity for unscrupulous carriers to fraudulently change a consumer's local toll and/or long-distance toll provider, and reap the rewards until the fraud is discovered. In CMRS, without separate local and long distance service, there is no opportunity for slamming.

Of course, as the Commission well knows, the CMRS marketplace is robustly competitive, and consumers readily switch from one provider to another without fraud. When a wireless customer seeks to switch his or her wireless provider, the switch almost invariably occurs through the Wireless Local Number Portability ("LNP") process that allows customers to keep their phone numbers and contains anti-fraud provisions. Under the LNP process, a wireless customer who is switching carriers will make a carrier change request with the new carrier, and the new carrier will then submit the customer's change request to the old provider, but only after

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slamming and cramming complaints and enforcement actions is "because wireless carriers and interconnected VoIP providers generally offer local and long-distance services as a bundle or for some other reason").

<sup>8</sup> Comments of CTIA, WT Docket No. 17-69 (filed May 8, 2017) ("CTIA Competition Report Comments").

<sup>9</sup> See *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6181-82 ¶ 47 (2015) ("Equal access requirements also allow customers to select a stand-alone long distance carrier other than the independent LEC or provider affiliated with the independent LEC as their prescribed long distance carrier.") (citation omitted).

validating the request.<sup>10</sup> This validation process ensures that carrier changes only happen pursuant to a customer's request, virtually eliminating any opportunity for fraud like slamming.<sup>11</sup>

Given the fundamentally different nature of the wireless marketplace, it is unsurprising that there is no evidence of slamming and slam-and-cram fraud by wireless carriers.<sup>12</sup> Because the slam-and-cram concerns that underlie the *NPRM* do not apply to CMRS, the Commission should not apply any new rules or obligations to that service.<sup>13</sup> Any new rules or obligations could, without any commensurate benefit, inadvertently disrupt existing highly competitive and streamlined processes, such as the LNP, in contravention of a key interest in this proceeding – that new rules do not impede competition.<sup>14</sup>

## **II. THE COMMISSION SHOULD REFRAIN FROM EXTENDING ANY NEW CRAMMING RULE TO CMRS.**

As discussed above, the *NPRM*'s fundamental concern is fraudulent slam-and-cram activities that exist only in the wireline marketplace. Any rules adopted in this proceeding should have a similarly narrow focus and should not extend to wireless service. In any event, should the Commission codify a new cramming rule, it should not hold carriers strictly liable for unauthorized charges if they have reasonable processes and practices in place.

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<sup>10</sup> See 47 C.F.R. § 52.36(b) (required standard data fields for port order processing).

<sup>11</sup> Further, structural differences between wireline and wireless service offerings restrict fraud opportunities. For instance, a consumer's wireless device will not work on all wireless networks, and the CMRS provider is often identified as part of the service, for example, when the device is turned on.

<sup>12</sup> See *NPRM*, 32 FCC Rcd at 6028-29 ¶ 18.

<sup>13</sup> Nor should the Commission apply any new rules or obligations to interconnected VoIP, which likewise lacks a slamming concern. *Id.*

<sup>14</sup> *Id.* at 6025 ¶ 10 (*NPRM* seeks “to address the evolving practices of bad actors with respect to slamming and cramming, *while not impeding competition* or impairing the ability of consumers to switch providers”) (emphasis added).

**A. It Is Unnecessary to Adopt a New Cramming Rule Applicable to CMRS Providers.**

Any previous concerns about mobile cramming have all but disappeared in recent years, and there is no basis to impose any new cramming rule on CMRS providers.

Mobile cramming has declined as a concern for several reasons. First, as the Commission is aware, the vast majority of allegedly unauthorized charges were in the context of Premium SMS billing (*i.e.*, reverse SMS billing), which is a vestige of the past.<sup>15</sup> Today, all four of the nationwide wireless carriers have banned Premium SMS billing, except for the limited, non-commercial instances of charitable and political contributions.<sup>16</sup> As a result, the principal method used in the past by third-party fraudsters to cram charges onto wireless customers' bills is no longer available.

Moreover, Commission enforcement activities have set clear, industrywide standards that effectively protect against cramming in the mobile sphere. Applying its authority under Sections 201 and 202 of the Communications Act and the Truth-in-Billing rules, the Commission entered into consent decrees with all four nationwide carriers.<sup>17</sup> The consent orders required, among other things, certain changes to the carriers' third-party billing processes and practices that

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<sup>15</sup> See Ina Fried, *AT&T, Sprint, T-Mobile, Verizon Dropping Most Premium Text Service Billing in Effort to Combat Fraud*, AllThingsD.com, Nov. 21, 2013, <http://allthingsd.com/20131121/att-sprint-t-mobile-verizon-all-dropping-most-premium-text-service-billing-in-effort-to-combat-fraud/>.

<sup>16</sup> See *id.*

<sup>17</sup> *AT&T Mobility, LLC*, Consent Decree, 29 FCC Rcd 11805 (EB 2014) (“*AT&T*”); *Sprint Corporation*, Consent Decree, 30 FCC Rcd 4575 (EB 2015) (“*Sprint*”); *T-Mobile USA, Inc.*, Consent Decree, 29 FCC Rcd 15114 (EB 2014) (“*T-Mobile*”); *Cellco Partnership d/b/a Verizon Wireless*, Consent Decree, 30 FCC Rcd 4592 (EB 2015) (“*Verizon Wireless*”).

substantially reduced or eliminated opportunities for third parties to impose fraudulent charges through customers' wireless bills.<sup>18</sup>

In light of these significant changes in the last few years, there is no record of evidence of mobile cramming today, nor is there any evidence to suggest that any mobile cramming concerns will return. The Commission therefore should not impose on CMRS a new, wholly unnecessary rule regarding cramming.<sup>19</sup>

**B. In Any Event, Any New Cramming Rule Should Not Hold Carriers Strictly Liable for Billing Issues.**

The discussion in the *NPRM* focuses on “unscrupulous carriers”<sup>20</sup> and “bad actors,”<sup>21</sup> yet proposed Section 64.2401(g) could be read to impose a strict liability standard against any unauthorized charges.<sup>22</sup> Read literally, the proposed provision would make any unauthorized

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<sup>18</sup> Moreover, the fact that the nationwide carriers already are subject to these requirements under their consent orders further undercuts any claim of a need to apply a new cramming rule to CMRS providers.

<sup>19</sup> The *NPRM* also asks about extending the proposed cramming rule (as well as other proposals) to pre-paid wireless service. *See NPRM*, 32 FCC Rcd at 6027 ¶ 13. Pre-paid wireless service, by its nature, does not include a bill. Instead, pre-paid wireless customers authorize and pay in advance any and all charges. Therefore they are not, and cannot be, subject to unauthorized charges on their bill.

<sup>20</sup> *See id.* at 6022 ¶ 1 (“All too often, *unscrupulous carriers* target Americans ... to carry out unauthorized carrier changes, or ‘slams.’”) (emphasis added); *id.* at 6024 ¶ 5 (Enforcement actions “illustrate that today *unscrupulous carriers* often slam and cram consumers by targeting people who may not realize they are being scammed or who may fail to file a complaint if they do.”) (emphasis added).

<sup>21</sup> *See id.* at 6025 ¶ 10 (“The steps we seek comment on today to strengthen our rules seek to address the evolving practices of *bad actors* with respect to slamming and cramming....”) (emphasis added).

<sup>22</sup> *Id.* at 6037 (“Carriers shall not place or cause to be placed on any telephone bill charges that have not been authorized by the subscriber.”).

charge, including a mistake by a customer service representative, a violation of the rule. That result is inconsistent with the *NPRM*'s focus on malicious and fraudulent activity.<sup>23</sup>

Instead, the Commission should make clear that a carrier does not violate any new cramming rule if, consistent with requirements the Commission set forth in its previous cramming consent orders, the carrier has “reasonable policies and practices” to confirm that third parties appropriately collect and document express informed consent.<sup>24</sup> Such practices include, for instance, (i) making a statistically valid random sample of purchases from third parties to ensure that the third parties are obtaining the customer’s consent; (ii) taking appropriate remedial action against a third party that fails to appropriately collect and document the customer’s authorization; and (iii) establishing an appropriate refund or credit process for disputed charges.<sup>25</sup> Carriers that establish reasonable systems, processes, and practices to ensure that third-party charges have been validly authorized in most instances – and maintain processes to address instances in which the customer claims they were not – should not be subject to FCC enforcement and forfeiture penalties.

The Commission also should make explicit that, even where a carrier’s own customer service representatives make mistakes and unauthorized charges are placed on a subscriber’s bill, the carrier should not be subject to enforcement activity provided it has reasonable processes in

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<sup>23</sup> Based on the *NPRM*'s focus on malicious activity, it appears that the Commission did not intend to hold carriers strictly liable for billing issues. In any event, strict liability is the wrong approach. Third-party billing through carriers provides an important convenience for many consumers, yet carriers cannot guarantee billing perfection. A strict liability approach would threaten carriers’ ability to offer third-party billing altogether, and would fail to offer any balance between the rule and “the burden [it] may place on legitimate ... third-party charges.” *NPRM*, 32 FCC Rcd at 6025 ¶ 10.

<sup>24</sup> *AT&T*, 29 FCC Rcd at 11810-14 ¶ 13; *Sprint*, 30 FCC Rcd at 4582-87 ¶ 15; *T-Mobile* 29 FCC Rcd at 15119-24 ¶ 16; *Verizon Wireless* 30 FCC Rcd at 4596-4600 ¶ 11.

<sup>25</sup> *See id.*

place.<sup>26</sup> Just as it is unreasonable for the Commission to expect perfection from carriers with respect to third-party billing, it is unreasonable to expect perfection for their own billing practices. Accordingly, in this proceeding, the Commission should make clear that carriers will not be subject to enforcement if they have reasonable policies and practices in place to investigate and remediate mistaken charges.

### **III. CONCLUSION.**

CTIA appreciates the Commission's focus on protecting consumers from the continued problem of wireline telephony fraud in the form of slam-and-cram schemes. CTIA urges the Commission to make sure that any rules adopted in this proceeding specifically address that ongoing problem, rather than extend such rules to CMRS services that are not subject to the same fraudulent activities.

Respectfully submitted,

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<sup>26</sup> In such circumstances, carriers refund their customers and make them whole, making enforcement unnecessary, a waste of Commission and carrier resources, and unduly punitive.